IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7439 of 1999

and

SPECIAL CIVIL APPLICATION No 9492 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINESHBHAI RAGHUBHAI NAYAKA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7439 of 1999

MR MM PRAJAPATI for Petitioner No. 1

MR PRAIDP BHATE A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 31/03/2004

ORAL JUDGEMENT

Both these petitions are based on identical sets of fact and they involve similar question of law. Hence, they are now being disposed of by this common judgment.

1.1. The petitioners were appointed as "Cook" in the service of respondent no.2. It appears that though the appointment was made in accordance with the relevant Rules, as if a regular appointment was being made, it was a temporary appointment, since the Circular dated 28th October, 1991, prohibited appointments on regular basis on account of financial crunch experienced by the Government. It appears that the petitioners repeatedly made request in one form or the other to regularise their service in view of the fact that they had put in number of years of service as temporary employees. Their requests were not acceded to and every time, reasons regarding financial crunch was being advanced. Ultimately, the petitioners have been constrained to approach this Court to redress their grievance. According to them, they are now being exploited by the respondents inasmuch as full day's work is being taken from them in much less salary.

1.2. Mr. M.M. Prajapati learned advocate appearing for the petitioner in both the petitions has submitted that the Apex Court as well as this Court on number of occasions have said that a person cannot be continued on temporary basis for long and he is to be made permanent on the post on which he is working if the post is permanent one. Inspite of that in the instant case, it clearly appears that right from June, 1992, they have been asked to work on temporary basis though they have been rendering service for eight hours in a day. If that be so, their grievance is required to be redressed. The say of the petitioners have remained uncontroverted since the respondents have chosen not to file affidavit-in-reply.

2. When it is found that the petitioners who have been working on temporary post since June, 1991, and they are now being exploited by the respondent, it is high time that this Court interfered with the same and grant them proper benefit. In similar circumstances, I have rendered decision in the case of Prajapati Kantibhai Prabhudas v. State of Gujarat dated 3rd February, 2004, in Special Civil Application No. 8876 of 1998 wherein it has been held as under :-

"I am in entire agreement with the aforesaid judgment. In view of the settled principle of

> law, in my opinion, the petitioners ought to have been regularised on their respective posts long back. However, that has not been done. It also appears that except the Circular of 1991, there is no other reason for not doing so. Atleast, the same has not been placed on record by the respondents by filing affidavit-in-reply. In the case of Kirtikumar S. Thakore v. Director in Special Civil Application No. 7156 of 1996, the learned Single Judge, (Coram : S.K. Keshote, J.) by decision dated 22nd April, 1999 had held that Government Circular containing direction/ instructions to its departments with regard to curtailing expenditure by not making appointment on permanent basis cannot be a ground for denying such benefit i.e. regularization of service several years after issuance of such Circular."

These petitions are, therefore, decided on the same line. In view of the aforesaid, the respondents are directed to regularise the service of the petitioners on the post they are working. The very fact that they have been discharging eight hours duty, shows that they are permanent posts. The petitioners shall be appointed in accordance with their claim with seniority etc., and if otherwise they are not found unfit for the said post. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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